

35144-1-III  
COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

RYAN S. ROBISON, APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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**BRIEF OF RESPONDENT**

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## **INDEX**

<b>I. ISSUES PRESENTED .....</b>	<b>1</b>
<b>II. STATEMENT OF THE CASE .....</b>	<b>1</b>
<b>III. ARGUMENT .....</b>	<b>2</b>
A. SUFFICIENCY OF THE EVIDENCE.....	2
B. APPELLATE COSTS.....	5
<b>IV. CONCLUSION .....</b>	<b>5</b>

## **TABLE OF AUTHORITIES**

### **WASHINGTON CASES**

<i>State v. Brown</i> , 162 Wn.2d 422, 173 P.3d 245 (2007) .....	2, 3
<i>State v. Case</i> , 187 Wn.2d 85, 384 P.3d 1140 (2016) .....	3
<i>State v. Drum</i> , 168 Wn.2d 23, 225 P.3d 237 (2010) .....	3
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980) .....	2
<i>State v. Hudlow</i> , 182 Wn. App. 266, 331 P.3d 90 (2014) .....	3
<i>State v. Johnson</i> , 104 Wn.2d 338, 705 P.2d 773 (1985) .....	3

### **STATUTES**

RCW 9A.52.030 .....	5
RCW 9A.56.040 .....	4

### **RULES AND REGULATIONS**

RAP 14.2 .....	5
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## **I. ISSUES PRESENTED**

1. Whether Mr. Robison's stipulation to certain facts on a bench trial is sufficient to sustain a conviction premised on those facts?
2. Whether this court should award costs should the State prevail?

## **II. STATEMENT OF THE CASE**

On June 16, 2015, Cary Cummings was working at the Davenport Grand Hotel. CP 2. While there, his work laptop was in the equipment room of the hotel. *Id.* The computer and its software had an approximate value of \$3,000. *Id.* On that day, the hotel was not yet open to the public. *Id.* Ryan Robison entered the hotel, walked into the equipment room and left a minute later carrying Mr. Cummings's laptop bag containing the laptop. CP 3. Mr. Robison left the hotel and gave the laptop to another individual. *Id.*

Following arrest, Mr. Robison was charged with second degree burglary and second degree theft. CP 1. He then agreed to terms for entering the "Drug Court" program. CP 8-11. Under those terms, Mr. Robison agreed to various conditions of the program, primarily treatment oriented, and, in exchange, the State agreed to dismiss the charges against him upon successful completion of the program. CP 8-9. Subsequently, the parties modified that agreement and placed him instead in the Mental Health Court program. CP 13-18. Both agreements provided that should Mr. Robison be

terminated from the program, he stipulated to the accuracy and reliability of the facts found in the police report for the purposes of a bench trial. CP 8, 13. Mr. Robison was eventually terminated from the Mental Health Court program. CP 24. The court proceeded to a bench trial, and found Mr. Robison guilty on both counts. RP 26-27.

### **III. ARGUMENT**

#### **A. SUFFICIENCY OF THE EVIDENCE**

Here, on appeal, Mr. Robison argues that the State presented insufficient evidence at trial to establish (1) that the stolen goods were greater than \$750 in value, and (2) that his entry onto the premises concerned was unlawful. However, his argument ignores the effect of his stipulations. Mr. Robison stipulated both that the stolen laptop was valued at approximately \$3,000 and that the premises was not open to the public. Having so stipulated, he cannot now challenge those facts on appeal.

When reviewing a claim that the State presented insufficient evidence at trial, this Court views all of the evidence in the light most favorable to the State to determine whether a rational trier of fact could conclude that the elements have been proven beyond a reasonable doubt. *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007). The State need not provide direct evidence of a fact, but must provide evidence from which the jury could reasonably infer the fact. *State v. Green*, 94 Wn.2d 216, 220,

616 P.2d 628 (1980); *State v. Hudlow*, 182 Wn. App. 266, 288, 331 P.3d 90 (2014). All such inferences must be drawn in favor of the State when considering the sufficiency of the State's evidence at trial. *Brown*, 162 Wn.2d at 428.

Here, the parties agreed to submit the matter to the court as a bench trial with stipulated facts. CP 8. When parties stipulate to facts, it is an agreement that the evidence at trial would establish those facts. *See State v. Johnson*, 104 Wn.2d 338, 341, 705 P.2d 773 (1985). Then, based on those facts, the court must make an independent determination of guilt or innocence.<sup>1</sup> *Id.* A stipulation for the purposes of trial admits the truth of some alleged fact. *State v. Case*, 187 Wn.2d 85, 90-91, 384 P.3d 1140 (2016). As a result of a stipulation, the adverse party need not present actual evidence to prove that fact, and the stipulating party cannot challenge that fact. *Id.* at 91.

But that is precisely what Mr. Robison does here. At trial, Mr. Robison stipulated to the admissibility and accuracy of the information in the police report. CP 8, 13; RP 3-4. That report indicated that the stolen laptop had an approximate value of \$3,000, and that the Davenport Grand

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<sup>1</sup> Although the agreement additionally stipulated that the evidence was sufficient to convict, Mr. Robison correctly notes such a stipulation is not binding on any court. Br. of Appellant at 3; *see State v. Drum*, 168 Wn.2d 23, 34, 225 P.3d 237 (2010).

Hotel “was not open to the public.” CP 2. Now, on appeal he challenges those two facts.

Mr. Robison asserts that there is nothing to establish how Mr. Cummings knew the value of the laptop or that he could testify to the value of the laptop. But these are evidentiary challenges to the admissibility of any potential testimony by Mr. Cummings. Mr. Robison *stipulated* that the \$3,000 valuation was admissible and that it was accurate. CP 2, 13. By stipulating to that fact, he waived any opportunity to challenge the basis underlying that fact. In order to support a conviction for second degree theft, the State was required to prove that Mr. Robison stole property that exceeded \$750 in value. RCW 9A.56.040(1). The agreed fact that the laptop had a value of \$3,000, was more than sufficient to establish that it exceeded \$750 in value.

Similarly, Mr. Robison asserts that there is no evidence to establish that he was not licensed to be on the premises nor that there was any evidence to establish that the public was excluded from the premises. But again, Mr. Robison *stipulated* that he walked into the equipment room at the Davenport Grand Hotel, that he stole a laptop therein, that he walked out one minute later with the laptop, and that “the Hotel was not open to the public.” CP 2-3, 13. In order to sustain a conviction for second degree burglary, the State was required to prove that Mr. Robison entered

unlawfully in a building with intent to commit a crime against property therein. RCW 9A.52.030. Since the hotel was not open to the public, it is readily inferred that it was closed, and consequently, that Mr. Robison's entry was unlawful.

#### **B. APPELLATE COSTS**

Under RAP 14.2 a commissioner or clerk of this court will award costs to the prevailing party unless it determines that a criminal defendant does not have the current or future ability to pay such costs. Additionally, a trial court order finding the defendant indigent for the purposes of appeal remains in effect unless a commissioner or clerk of this Court finds by a preponderance that the offender's financial circumstances have significantly improved. RAP 14.2.

The trial court found Mr. Robison indigent for purposes of this appeal based on a declaration provided by Mr. Robison. At this time, the State is unaware of any changes in Mr. Robison's circumstances. Should his appeal be unsuccessful, the Court should only impose appellate costs in conformity with RAP 14.2.

#### **IV. CONCLUSION**


Mr. Robison cannot stipulate to the truth of facts, then later challenge those facts on appeal. In light of his stipulations, there was sufficient evidence to convict Mr. Robison of both second degree theft and



second degree burglary. Consequently, this Court should affirm the convictions.

Dated this 16 day of October, 2017.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
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STATE OF WASHINGTON,

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v.

RYAN S. ROBISON,

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NO. 35144-1-III

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on October 16, 2017, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

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10/16/2017  
(Date)

Spokane, WA  
(Place)

  
(Signature)

# SPOKANE COUNTY PROSECUTOR

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